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In the

Supreme Court of the United States

OCTOBER TERM, 1932

SAM HAWKS, J. F. McKEEL and LEW WENTZ, constituting the State Highway Commission of Oklahoma; J. BERRY KING, Attorney General of Oklahoma; PURMAN WILSON, County Attorney of McClain County, Oklahoma; PERSON WOODALL, County Attorney of Cleveland County, Oklahoma; and J. R. EVATT, A. O. MADDOX, J. E. COLBERT, J. C. TODD, GEORGE CARPENTER and GEORGE N. CHURCH,

Petitioners,

vs.

CHARLES H. HAMILL and WILLOUGHBY G. WALLING,

Respondents.

No. 147

PETITION FOR WRIT OF CERTIORARI.

J. BERRY KING,
Attorney General of Oklahoma,
W. C. LEWIS,
Assistant Attorney General of Oklahoma,

Counsel for Petitioners.

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INDEX.

PAGES

Statement of the case ---------- 2

Statement of the issues ---------- 10

POINT ONE ---------- 12

Authorities:

Grove Bridge Co. et al. vs. State ex rel., etc., 133 Okla. 115, 271 Pac. 846 ---------- 12
Chapter 34, Compiled Oklahoma Statutes 1921 ---- 12
City of Okmulgee vs. Okmulgee Gas Company, 140 Okla. 88, 282 Pac. 640 ---------- 12
City of Okmulgee vs. Okmulgee Gas Company, 141 Okla. 98, 284 Pac. 70 ---------- 12
City of Hugo vs. Oklahoma Power Company, 141 Okla. 100, 284 Pac. 12 ---------- 12
City of Cushing vs. Consolidated Gas Utilities Co., 141 Okla. 82, 284 Pac. 38 ---------- 12
In re Application of Consolidated Gas Utilities Company for Revocable Permit Under Chap. 102, Session Laws 1925, Relative to the Town of Tonkawa, Oklahoma, No. 20,766, Supreme Court of Oklahoma (not yet officially reported) ---------- 12
Section 32, Article 2, Constitution of Oklahoma.---- 12

POINT TWO ---------- 13

Authorities:

Ayers vs. Board of Trustees, 98 So. 847-850 ---------- 14
Chapter 48, Session Laws of Oklahoma 1923-24 ---- 14
Chapter 82, Session Laws of Oklahoma 1927---------- 14
Chapter 245, Session Laws of Oklahoma 1929------ 14
Eidenmiller vs. State, 233 N. W. 447 ---------- 13
Ex parte Ayers, 123 U. S. 443, 31 L. ed. 216---------- 14
Hampton vs. State Board of Education, 42 A. L. R 1456 (Fla.) ---------- 14

PAGE

Hawks et al. vs. Seay et al., 150 Okla. 160, 1 Pac. (2d) 148 ---- 14
Long vs. Highway Commission of Iowa, 213 N. W. 532 ---- 14
Lankford vs. Schroeder, 47 Okla. 279, 147 Pac. 1049 13
Lankford vs. Platt Iron Works Company, 235 U. S. 461, 59 L. ed. 316 ---- 12
Love vs. Filtsch, 33 Okla. 131, 124 Pac. 30 ---- 13
McDowell vs. Fuller, 169 Mich. 332, 135 N. W. 267 ---- 14
Mississippi Centennial Exposition Co. vs. Luderback, 123 Miss. 828, 86 So. 517 ---- 14
Norrah vs. Dr. John De La Howe Industrial School, 113 S. E. 70 ---- 14
Poindexter vs. Greenhowe, 114 U. S. 270, 29 L. ed. 185 ---- 14
Section 1, Article 16, Oklahoma State Constitution ---- 14
State Banking Board vs. Oklahoma Bankers Trust Company, 63 Okla. 260, 145 Pac. 767 ---- 13
State Banking Board vs. Oklahoma Bankers Trust Company, 49 Okla. 72, 151 Pac. 586 ---- 13
Stanley vs. Schwalby, 162 U. S. 255, 40 L. ed. 967 ---- 14
Section 1, Chapter 68, Session Laws Oklahoma 1929 14
Section 1, Article 6, Oklahoma State Constitution ---- 14
State Highway Commission of Wyoming vs. Utah Construction Co., 278 U. S. 194, 73 L. ed. 262 ---- 14
Wentz et al. vs. Ingenthron, 146 Okla. 165, 294 Pac. 154 ---- 14
Wentz vs. Board of County Commrs. of Lincoln County, Oklahoma, 147 Okla. 173, 295 Pac. 599 ---- 14
Wentz et al. vs. Dawson et al., 149 Okla. 94, 299 Pac. 493 ---- 14

Conclusion ---- 14

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SAM HAWKS, J. F. MCKEEL and LEW WENTZ, constituting the State Highway Commission of Oklahoma; J. BERRY KING, Attorney General of Oklahoma; PURMAN WILSON, County Attorney of McClain County, Oklahoma; PERSON WOODALL, County Attorney of Cleveland County, Oklahoma; and J. R. EVATT, A. O. MADDOX, J. E. COLBERT, J. C. TODD, GEORGE CARPENTER and GEORGE N. CHURCH,

Petitioners,

vs.

CHARLES H. HAMILL and WILLOUGHBY G WALLING,

Respondents.

No. _____

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioners, Sam Hawks, J. F. McKeel and Lew Wentz, constituting the State Highway Commission of Oklahoma; J. Berry King, Attorney General of Oklahoma; Purman Wilson, County Attorney of McClain County, Okla-

homa; Person Woodall, County Attorney of Cleveland County, Oklahoma, and J. R. Evatt, A. O. Maddox, J. E. Colbert, J. C. Todd, George Carpenter and George N. Church, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals of the Tenth Circuit of the United States to reverse an opinion and judgment of said United States Circuit Court of Appeals of the Tenth Circuit of the United States, heretofore rendered against your petitioners, and in support thereof respectfully represent and show:

STATEMENT OF THE CASE.

The petitioners, Sam Hawks, J. F. McKeel and Lew Wentz, constitute the State Highway Commission, an executive department of the State of Oklahoma, and J. Berry King is the duly elected, qualified and acting Attorney General of the State of Oklahoma.

The petitioners J. R. Evatt, A. O. Maddox and J. E. Colbert are County Commissioners of McClain County, Oklahoma, and Purman Wilson is the County Attorney of McClain County, Oklahoma; and the petitioners J. C. Todd, George Carpenter and George N. Church are County Commissioners of Cleveland County, Oklahoma, and Person Woodall is the County Attorney of Cleveland County, Oklahoma. The respondents, Charles H. Hamill and Willoughby G. Walling, are residents of the State of Illinois and claim to be the owners of a certain bridge structure located over the

South Canadian River between the towns of Lexington, Cleveland County, Oklahoma, and Purcell, McClain County, Oklahoma.

The respondents filed their bill of complaint against the petitioners herein as defendants in the United States District Court for the Western District of Oklahoma, seeking an injunction against the petitioners herein, and all persons acting by, through or under them, and all citizens of the State of Oklahoma using the Purcell-Lexington toll bridge from interfering with the respondents in the operation of said toll bridge and in the collection of tolls from persons using the same, and from using said bridge without the payment of tolls. Said bill further alleged that the action was one between residents of the State of Illinois and citizens and residents of the State of Oklahoma, and that the amount in controversy exceeded, exclusive of interest and costs, the sum or value of $3,000.00; that on the 22nd day of April, 1911, the County Commissioners of McClain County, Oklahoma, granted to Dorset Carter and Tom Halsell, and their assigns, a franchise to construct, erect and maintain a toll bridge across the South Canadian River at or near Purcell, Oklahoma; that the franchise so granted was perpetual, subject only to such limitations as by law provided. A copy of such franchise was attached to the complaint.

The bill further alleged that on the 16th day of May, 1911, the Board of County Commissioners of Cleveland

County, Oklahoma, granted to Dorset Carter and Tom Halsell, and their assigns, a franchise to construct, maintain and operate a toll bridge and to collect tolls thereon across the South Canadian River, which franchise was perpetual, subject only to such limitations as provided by law, and a copy of said franchise was attached to the complaint.

The respondents in said bill alleged that pursuant to authority granted by said franchise, Dorset Carter and Tom Halsell commenced the construction of the toll bridge across the South Canadian River; that on the 11th day of May, 1911, Willoughby G. Walling, Charles H. Hamill and Dorset Carter caused to be incorporated under the laws of the State of Oklahoma a corporation under the name of Purcell-Lexington Toll Bridge Company, for the purpose of erecting, constructing, building and maintaining, or to lease or purchase and operate the toll bridge and approaches thereto over and across the South Canadian River, and to collect and receive tolls for such service; that the articles of incorporation provided that the term of its existence was twenty years; that thereafter on the 6th day of December, 1911, Dorset Carter, Tom Halsell, Willoughby G. Walling and Charles H. Hamill conveyed and transferred to Purcell-Lexington Toll Bridge Company a certain bridge then in process of construction across the South Canadian River, with its supports, approaches, lands and franchises and property and the right to operate and maintain the same, with tolls

to issue therefrom, together with the franchise granted to Dorset Carter and Tom Halsell by the County Commissioners of McClain and Cleveland Counties; that by virtue of said conveyance, Purcell-Lexington Toll Bridge Company became the owner of the property therein described and the franchise to operate the toll bridge and collect the toils therefrom.

It further alleged that said Bridge Company completed the construction of the toll bridge authorized and for many years and until recently, said corporation owned and operated the toll bridge and private road leading thereto, and had collected tolls from the operation of the same under the terms of the franchise granted by said counties to Carter and Halsell; that the corporate life of the Purcell-Lexington Toll Bridge Company would expire on May 18, 1931, and said corporation on said date would cease to exist; that on April 2, 1931, the Bridge Company conveyed to Walling, Hamill and Carter the toll bridge and the franchise to operate the same and collect tolls thereon, and on the 17th day of April, 1931, Carter conveyed said property and franchise to Walling and Hamill and that said last named persons were then the owners of said bridge and the right to maintain and operate the same and to collect tolls thereon, and that they were at that time operating said bridge and collecting tolls authorized by law, and under the terms of the franchise owned by them and under which they were operating said toll bridge; that they had the legal right to con-

tinue to operate said bridge and collect tolls therefrom until such franchise had been revoked or repealed as provided by law, and that such franchise had not been revoked or repealed and was still effective.

The bill further alleged that the petitioners contended that the right to operate the bridge and to collect tolls from persons using the same would terminate with the corporate existence of the Bridge Company on the 18th day of May, 1931, and that said bridge at that time would become a free bridge and a part of the state highway system of Oklahoma, with the right and privilege of the citizens of the State of Oklahoma to use the same as a public highway without payment of tolls. That the franchises to construct, operate and maintain the bridge and collect tolls therefrom were granted to individuals and were not connected with nor influenced by the corporate existence of the Toll Bridge Company, and that the secondary franchise under which respondents operated said bridge and collected tolls thereon, did not terminate with the corporate life of the Toll Bridge Company, and that such franchise continued in full force and effect in accordance with the provisions of the secondary franchise. That the petitioners constituting the Highway Commission of Oklahoma would, unless enjoined by the court in violation of the franchise rights of the respondents, take charge of the toll bridge as part of the highway system of Oklahoma, and deprive the respondents of their

property for the use and benefit of the traveling public without compensation, and would interfere with and prevent the respondents from operating the toll bridge and collecting tolls from persons using the same, and that the petitioners were then and would continue to encourage the citizens of Oklahoma in the belief that they had the right to use said bridge without the payment of tolls after May 18, 1931, and by reason thereof, it would be practically impossible for respondents to conduct their business and collect the tolls which they were entitled to receive under the franchises, and that the business of the respondents and their investment in said bridge would be destroyed. That the petitioners Evatt, Maddox, Colbert, Todd, Carpenter and Church, were citizens of Oklahoma, residing in the vicinity of the bridge and representatives of the citizens of the State of Oklahoma, who had occasion to and did use said bridge after May 18, 1931, and that the petitioners and other citizens of Oklahoma having occasion to use said bridge, would, unless enjoined, use the same without the payment of tolls and respondents would either be compelled to resort to force to prevent the unlawful use of the bridge or prosecute a multiplicity of suits for that purpose. That the petitioners contended that if the respondents should collect tolls from persons using said bridge after May 18, 1931, they would be subject to a forfeiture of $25.00 to each person from whom a toll was collected, and that they would also be guilty of obstructing the highway and subject to a

fine of not exceeding $100.00 for each offense, and would also be liable in damages to the individuals prevented from using said bridge. That the petitioner J. Berry King, as Attorney General of Oklahoma, had threatened to and would institute injunction proceedings, or other legal proceedings, against the respondents for the purpose of preventing them from operating said bridge and collecting tolls therefrom, unless enjoined. That the petitioners Purman Wilson, County Attorney of McClain County, Oklahoma, and Person Woodall, County Attorney of Cleveland County, Oklahoma, would, unless enjoined, institute proceedings to prevent respondents from operating said bridge and collecting tolls therefrom, and would institute other proceedings to punish the respondents for the alleged unlawful obstruction of a public highway. That the respondents would be subject to wrongful and unlawful interference with the business of operating said toll bridge by the petitioners and each of them, and subjected to a multiplicity of suits and legal proceedings and respondents would be unable to operate their business without serious and imminent danger to persons and property and without subjecting themselves to a multiplicity of suits and legal proceedings on the part of petitioners and other citizens of the State of Oklahoma desiring to use said toll bridge. That respondents had no adequate remedy at law and unless an injunction was granted, they would suffer irreparable injury and danger and would be deprived of their property for public use without compensation.

A temporary restraining order was granted on May 15, 1931, and a hearing on the application for temporary injunction was set for May 23, 1931. The respondents filed an amendment to the bill of complaint alleging that the conveyance executed by Carter, Halsell, Walling and Hamill to Purcell-Lexington Toll Bridge Company was duly recorded in the office of the Registrar of Deeds of Cleveland and McClain Counties, and that the deed from the Purcell-Lexington Toll Bridge Company to Walling, Hamill and Carter, and the deed from Carter and Walling to Hamill was also duly recorded. The petitioners filed their separate motions to dismiss the bill of complaint. Said motions raised issues of law, namely: Whether the suit, insofar as it affected the members of the State Highway Commission and J. Berry King as Attorney General of Oklahoma, was one against the sovereign State of Oklahoma and contrary to the 11th Amendment to the Constitution of the United States, and whether the franchises had expired by their own limitations when the order of dismissal was entered on May 29, 1931, and whether or not the franchises granted by the County Commissioners were perpetual and whether or not such franchises were inhibited by said provisions of the Oklahoma State Constitution, particularly Section 32 of Article 2 of said Constitution.

The trial court sustained the motions of the petitioners to dismiss the case, and in the written opinion filed in said

cause held that the secondary franchises were inhibited by Section 32, Article 2 of the State Constitution of Oklahoma as announced in the case of *The City of Okmulgee* v. *Okmulgee Gas Company*, 140 Okla. 88; 282 Pac. 640; that the secondary franchises were taken by individuals in trust for the Purcell-Lexington Toll Bridge Company and that such secondary franchises ceased to exist at the expiration of the corporate life of the Purcell-Lexington Toll Bridge Company.

The respondents herein appealed from the decision of the trial court to the Circuit Court of Appeals of the Tenth Circuit, and said Circuit Court of Appeals on April 14, 1932, reversed the decree of dismissal with direction to the court below to issue the injunction prayed for in the bill.

Your petitioners now seek to bring the matter before this Court for a writ of certiorari to review the action of the United States Circuit Court of Appeals for the Tenth Circuit of the United States on account of the errors of said court as hereinafter set out.

STATEMENT OF THE ISSUES.

The petitioners, the members of the State Highway Commission of Oklahoma, and the Attorney General of Oklahoma, contended in the courts below that they were executive officers of the State of Oklahoma, and that in the exercise of their official duties represented the sovereign State of Oklahoma. That it was their duty to enforce the

laws pertaining to the State Highway system of the State of Oklahoma, and that the object of the suit was to preclude the individual members of the State Highway Commission of the State of Oklahoma and the Attorney General thereof from performing certain duties specifically enjoined from them as such executive officers of the State, and by reason thereof the action was in truth and in fact against the sovereign State of Oklahoma, and that it could not be maintained by reason of the 11th Amendment of the Constitution of the United States.

The remaining petitioners contended, with the aforesaid state officers, that the bill of complaint filed by the respondents did not state a cause of action.

As we understand the decision of the Circuit Court of Appeals, two points were decided in the opinion delivered by presiding Judge Lewis of said court:

First, that the secondary franchises, whether granted to individuals, or to the Bridge Company, were perpetual, and that there were neither constitutional nor statutory inhibitions against the granting of perpetual franchises, and that such secondary franchises were perpetual.

Second, that said suit, insofar as it affected the state officers named as defendants, was not a suit against the State.

Point One.

It is the contention of the petitioners that the secondary franchises were not perpetual and were limited to the life of the Purcell-Lexington Toll Bridge Company, which expired on May 18, 1931, and that under the terms thereof, the bridge structure became public property disburdened of tolls on said date.

Section 32, Article 2, Constitution of Oklahoma.
City of Okmulgee v. *Okmulgee Gas Company,* 140 Okla. 88, 282 Pac. 640.
City of Okmulgee v. *Okmulgee Gas Company,* 141 Okla. 98, 284 Pac. 70.
City of Hugo v. *Oklahoma Power Company,* 141 Okla. 100, 284 Pac. 12.
City of Cushing v. *Consolidated Gas Utilities Company,* 141 Okla. 82, 284 Pac. 38.
In re Application of Consolidated Gas Utilities Company for Revocable Permit Under Chapter 102, Session Laws 1925, Relative to the Town of Tonkawa, Oklahoma, No. 20766, Supreme Court of Oklahoma (not yet officially reported).
Chapter 34, Compiled Oklahoma Statutes 1921.
Grove Bridge Company et al. v. *State ex rel. etc.,* 133 Okla. 115, 271 Pac. 846.

The constitutional provision referred to inhibits perpetual franchises and the cases specifically so hold. The defendant in the Okmulgee Gas Company case reported in 140 Okla. 88, 282 Pac. 640, *supra,* in its petition for rehearing filed in the Supreme Court of Oklahoma, on pages 11 to 19, inclusive, especially urged that the Supreme Court of Oklahoma erred in holding that the franchise involved

in that case was inhibited by said Section 32, Article 2, *supra*, the perpetuity clause of the Oklahoma State Constitution. Therefore, the Circuit Court of Appeals decided an important question of local law in conflict with the decisions of the Supreme Court of the State of Oklahoma construing a constitutional provision of said State. It is contended by the petitioners herein that the decisions of the Supreme Court of Oklahoma construing said constitutional provision are controlling on the federal courts. It is further contended by these petitioners that if the opinion of the Circuit Court of Appeals becomes final that the same will nullify the opinion of the Supreme Court of Oklahoma construing said constitutional provision and that such decision presents an important question of general law, untenable and in conflict with the weight of authority.

Point Two.

Said suit was against the sovereign State of Oklahoma and inhibited by the 11th Amendment to the Constitution of the United States.

State Banking Board v. *Oklahoma Bankers Trust Company*, 63 Okla. 260, 145 Pac. 767.
Lankford v. *Schroeder*, 47 Okla. 279, 147 Pac. 1049.
State Banking Board v. *Oklahoma Bankers Trust Company*, 49 Okla. 72, 151 Pac. 586.
Lankford v. *Platt Iron Works Company*, 235 U. S. 461, 59 Law Edition 316.
Love v. *Filtsch*, 33 Okla. 131, 124 Pac. 30.
Eidenmiller v. *State*, 233 N. W. 447.

Hampton v. *State Board of Education*, 42 A. L. R. 1456 (Fla.).
Stanley v. *Schwalby*, 162 U. S. 255, 40 L. ed. 967.
McDowell v. *Fuller*, 169 Mich. 332, 135 N. W. 267.
Ayers v. *Board of Trustees*, 98 So. 847-850.
Mississippi Centennial Exposition Company v. *Luderback*, 123 Miss. 828, 86 So. 517.
Norrah v. *Dr. John De La Howe Industrial School*, 113 S. E. 70.
Ex parte Ayers, 123 U. S. 443, 31 L. ed. 216.
Section 1, Article 16, Oklahoma State Constitution.
Section 1, Chapter 68, Session Laws of Oklahoma 1929.
Chapter 48, Session Laws of Oklahoma 1923-24.
Chapter 82, Session Laws of Oklahoma 1927.
Chapter 245, Session Laws of Oklahoma 1929.
Wentz et al. v. *Ingenthron*, 146 Okla. 165, 294 Pac. 154.
Wentz v. *Board of County Commissioners of Lincoln County, Oklahoma*, 147 Okla. 173, 295 Pac. 599.
Wentz et al. v. *Dawson et al.*, 149 Okla. 94, 299 Pac. 493.
Hawks et al. v. *Seay et al.*, 150 Okla. 160, 1 Pac. (2d) 148.
Poindexter v. *Greenhowe*, 114 U. S. 270, 29 L. ed. 185.
Long v. *Highway Commission of Iowa*, 213 N. W. 532.
Section 1, Article 6, Oklahoma State Constitution.
State Highway Commission of Wyoming v. *Utah Construction Company*, 278 U. S. 194, 73 L. ed. 262.

Wherefore, petitioners pray that a writ of certiorari may issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit of the United States, requiring it to certify the

case to this Court and reverse its determination, as provided by the Judicial Code of the United States, and amendments thereto, or that your petitioners may have such other or further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of said Judicial Code, and that said judgment of the Circuit Court of Appeals of the Tenth Circuit of the United States, and every part thereof, may be reversed by this Honorable Court.

J. Berry King,
Attorney General of Oklahoma,
W. C. Lewis,
Assistant Attorney General of Oklahoma,

Counsel for Petitioners.

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INDEX

PAGE

Statement of the Case ---------- 1

Duration of a Franchise---------- 4

Binghampton Bridge Case, 3 Wall. 51, 18 L. ed. 137-- 5
Blair vs. Chicago, 201 U. S. 400, 50 L. ed. 801------ 5
Charles River Bridge, 11 Pac. 420, 9 L. ed. 773---- 5
Northwestern Fertilizer vs. Hyde Park, 97 U. S. 659, 24 L. ed. 1036 ---------- 5
Perrine vs. Chesapeake, 9 How. 172, 13 L. ed. 92---- 5
St. Claire vs. Illinois, 96 U. S. 63, 24 L. ed. 651---- 5

Perpetual Franchises ---------- ------- 5

City of Okmulgee vs. Okmulgee Gas Company, 282 Pac. 640 (Okla.) ---------- 6
City of Brenham vs. Brenham Water Co., 67 Tex. 542, 4 S. W. 143 ---------- 7
Cedar Rapids Water Co. vs. City of Cedar Rapids, 118 Iowa 234, 91 N. W. 1081 ---------- 7
Long vs. City of Duluth, 49 Minn. 280, 51 N. W. 913, 32 Am. St. Rep. 547 ---------- 7
Northwestern Fertiliper vs. Hyde Park, 97 U. S. 659,
Richmond Co. Gaslight Co. vs. Town of Middletown, 59 N. Y. 228 ---------- 7
Section 32, Article 2, Constitution of Oklahoma---- 5
Stiles vs. Norton, 125 Ky. 672, 101 S. W. 1189, 13 L. R. A. (N. S.) 474 ---------- 7
Thrift vs. Elizabeth City, 122 N. C. 31, 30 S. E. 349, 44 L. R. A. 427 ---------- 7

Decisions of State Courts on Questions of Local Law and State Constitutions are Binding on Federal Courts---- 7

Illinois C. R. Co. vs. Chicago, 176 U. S. 646, 44 L. ed. 622 - - - ---------- ---------- 7

PAGE

Luther vs. Borden, 7 How. 1, 12 L. ed. 581 ---------- 7
McIver vs. Walker, 4 Wheat. 444, 4 L. ed. 611 ------ 7
Palmer vs. Ohio, 248 U. S. 32, 63 L. ed. 108 -------- 7

Bill of Complaint Constitutes Suit Against the Sovereign State of Oklahoma, and is Inhibited by the 11th Amendment to the Constitution of the United States -------- 8

Ayers, Ex parte, 123 U. S. 443, 31 L. ed. 216 -------- 8
State Highway Comm. of Wyoming vs. Utah Const. Co., 278 U. S. 194, 73 L. ed. 262 ---------- 8

Conclusion - - - ---------- 9

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Respondents.

No. 147

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The petitioners named in the caption hereof are state and county officers of the State of Oklahoma. The respondents are residents of Illinois and claim to be the owners of a certain bridge structure located over the South Canadian

River between the towns of Lexington, Oklahoma, and Purcell, Oklahoma.

The respondents filed their bill of complaint against the petitioners as defendants in the United States District Court for the Western District of Oklahoma, praying for the issuance of an injunction against the petitioners and other persons preventing the operation of the toll bridge and collection of tolls for the use of same by respondents.

The bill contained the usual allegation as to diversity of citizenship and the amount in controversy. We will not attempt to set forth the allegations of the bill as the same are copied in narrative form on pages 3 to 8, inclusive, of the petition for writ of certiorari filed herein, and the same is copied in *haec verba* in the transcript of record filed herein beginning on page 3 and continuing to page 27, inclusive thereof. Without here repeating the allegations, we deem it sufficient to state that respondents in said action contended that they were the owners of that certain bridge property involved and described in the bill of complaint, and it is the contention of the petitioners herein that such bridge property became public property disburdened of tolls on the 18th day of May, 1931.

A temporary restraining order was issued by the court on May 15, 1931, and the case proceeded to trial thereafter on May 23, 1931. The petitioners herein filed their separate

motions to dismiss the bill of complaint and said motions raised issues of law. The trial court sustained the motions of the petitioners to dismiss the case and the respondents herein appealed from the decision of the trial court to the Circuit Court of Appeals of the Tenth Circuit, and said court on April 14, 1932, reversed the decree of dismissal with direction to the court below to issue the injunction prayed for in the bill. Within the time prescribed by law the petitioners filed this petition for writ of certiorari in this Honorable Court in accordance with the rules thereof.

As a part of the petition for the writ of certiorari filed herein, we made a statement of the issues and cited certain cases which we think applicable and decisive of the questions involved herein. However, in order that the Court may have a more extended brief in support of point number one, appearing on page 12 of the petition for writ of certiorari, we desire to call the Court's attention to the following cases, provisions of law and constitutional enactments of the State of Oklahoma.

The law of Oklahoma under which the Purcell-Lexington Toll Bridge Company was incorporated is found in Sections 5366 to 5375, inclusive, Compiled Oklahoma Statutes 1921. The life of the toll bridge corporation under such law is limited to twenty years from the time of the issuance of the charter which was issued to the Purcell-Lexington Toll Bridge Company on May 18, 1911. No bridge company

may operate a toll bridge after having received its charter until it shall have received authority from the county commissioners of the counties in which the bridge is located to operate the same, under the provisions of Section 5367, Compiled Oklahoma Statutes 1921.

It was the contention of the petitioners herein in the case below that even though the secondary franchise was granted to individuals, some of whom were the incorporators of the Purcell-Lexington Toll Bridge Company, just a few days before the articles of incorporation were filed, that such secondary franchise was taken by said individuals as trustees for the corporation subsequently filed. That therefore the duration of the secondary franchise was limited to twenty years from the date of the incorporation of the Purcell-Lexington Toll Bridge Company. Section 5366, *supra*, is very specific in its terms that the existence of a bridge corporation shall not exceed twenty years. If we were correct in our contention that the individuals who were the grantees in the secondary franchise were trustees for the corporation later formed, then said secondary franchise was limited to a duration of twenty years from May 18, 1911, and expired on May 18, 1931.

It is well established by an abundance of authorities that where a franchise fixes no period of duration, its period is limited to the life or existence of the grantee.

St. Claire v. *Illinois*, 96 U. S. 63, 24 L. ed. 651.
Blair v. *Chicago*, 201 U. S. 400, 50 L. ed. 801.
Charles River Bridge, 11 P. 420, 9 L. ed. 773.
Perrine v. *Chesapeake*, 9 How. 172, 13 L. ed. 92.
Binghampton Bridge Case, 3 Wall. 51, 18 L. ed. 137.
Northwestern Fertilizer v. *Hyde Park*, 97 U. S. 659, 24 L. ed. 1036.

It may be argued that on account of the language used in the secondary franchise: "That the grants herein made shall be perpetual, subject only to such limitations as is by law now or may be hereafter provided" conveys a franchise in perpetuity. Such was the holding of Judge Lewis in the opinion rendered on April 14, 1932, in the Circuit Court of Appeals. But in arriving at the correctness of such conclusion, it was incumbent upon Judge Lewis and is upon this Honorable Court, to take into consideration the general principle of law "that grants of franchise and special privileges are always to be construed most strongly against the donee and in favor of the public."

In addition to the statutes and cases referred to herein, we desire to call this Honorable Court's attention to Section 32, Article 2, Constitution of Oklahoma, which is as follows: "Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed nor shall the law of *primo geniture* or entailments ever be enforced in this State."

The Supreme Court of Oklahoma in the first five cases

cited under point one on page 12 of the petition for writ of certiorari announced the rule that perpetual franchises are inhibited by reason of Section 32, Article 2 of the Oklahoma Constitution.

In the case of *City of Okmulgee* v. *Okmulgee Gas Company*, 282 Pac. 640, in paragraph one of the syllabus, the court held that a perpetual franchise violates said section of the Constitution. On page 649 of the quoted volume, Judge Swindall used the following language:

> "All of the authorities that we have been able to find hold that, where a franchise is not limited in its existence to a fixed and definite period of years, then the same is a perpetual franchise, and if we should hold that Section 5(a) of Article 18 was intended by the framers of the Constitution to limit only the powers of municipalities in granting franchises, and that the legislature had the power to grant a franchise or provide for the surrendering of a limited franchise granted by a municipal corporation and accept in lieu thereof a revocable permit without limit as to time of existence, in other words, a perpetual franchise, and thus extricate House Bill No. 4, from the control of Section 5(a) of Article 18, *supra, then it would run into the teeth of Section 32 of Article 2 of the Constitution, which provides that: 'Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed'.*"

The following rule of law is well established by the cases appearing following the quotation: "Grants of franchises in perpetuity or for unreasonably long period of time, are generally regarded as against public policy and if ever valid, the

authority therefor must be found in the Constitution or statutes of the State."

Richmond Co. Gaslight Co. v. *Town of Middletown,* 59 N. Y. 228.
City of Brenham v. *Brenham Water Co.,* 67 Tex. 542, 4 S. W. 143.
Long v. *City of Duluth,* 49 Minn. 280, 51 N. W. 913, 32 Am. St. Rep. 547.
Thrift v. *Elizabeth City,* 122 N. C. 31, 30 S. E. 349, 44 L. R. A. 427.
Cedar Rapids Water Company v. *City of Cedar Rapids,* 118 Iowa 234, 91 N. W. 1081.
John Stiles v. *Charles Norton,* 125 Ky. 672, 101 S. W. 1189, 13 L. R. A. (N. S.) 474.

We understand the law to be that the decisions of the state courts on a question of local law are conclusive in the Federal Supreme Court and that decisions of the Supreme Court of the State having to do with the validity, construction and effect of State Constitutions and statutes are also binding upon the Federal Courts.

The following cases support this view:

Illinois C. R. Co. v. *Chicago,* 176 U. S. 646, 44 L. ed. 622.
McIver v. *Walker,* 4 Wheat. 444, 4 Law ed. 611.
Palmer v. *Ohio,* 248 U. S. 32, 63 L. ed. 108.
Luther v. *Borden,* 7 How. 1, 12 Law ed. 581.

With the above authorities and those cited on page 12 under point one of the petition for writ of certiorari filed herein, it is urged by the petitioners herein that Judge Lewis erred in holding that the secondary franchise of the bridge

company was perpetual, and that by reason thereof, this Honorable Court should grant the petition for a writ of certiorari in order that the proceedings may be reviewed by this Honorable Court.

The remaining question presented in the petition for writ of certiorari is found under point 2, page 13 of said petition filed herein, and is whether or not the bill of complaint filed by the respondents constitutes a suit against the sovereign State of Oklahoma, and therefore inhibited by the 11th Amendment to the Constitution of the United States.

We have called the Court's attention to cases which we think decisive of this point on pages 13 and 14 of the petition for writ of certiorari filed herein.

We think the cases of *Ex parte Ayers*, 123 U. S. 443, 31 L. ed. 216, and *State Highway Commission of Wyoming* v. *Utah Construction Company*, 278 U. S. 194, 73 L. ed. 262, sustained the position of the petitioners herein.

The Utah Construction case, *supra*, so far as we have been able to ascertain, is the latest expression of this Honorable Court upon the question of whether or not a suit against a Highway Commission, an executive department of the State, is a suit against the State. This Court is familiar with the decision rendered in said case, and without elucidating upon the same, suffices it to state that this Honorable Court held in said case that a suit brought by the Utah Con-

struction Company against The State Highway Commission of Wyoming was in fact a suit against the sovereign State of Wyoming and could not be maintained.

In conclusion, the petitioners herein respectfully urge this Honorable Court in considering this petition for writ of certiorari and the record herein, that it consider all the constitutional and statutory enactments referred to and the authorities cited in support of the petition for writ of certiorari and all cases cited therein in addition to the cases referred to in this additional brief, and that upon consideration of the same, that the Court grant the petition and permit the briefing thereof and submission to this Honorable Court.

Respectfully submitted,

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